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June 14, 2013

Nathan S. Winesett
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Re: Deposition of **Matt Forsgren**
05/20/2013
Brody Chemical Company, Inc. vs. Goldthorpe

Dear :

Please be advised that the signed original of the transcript referenced above has been sealed and is being delivered to you for safekeeping until trial or other disposition of the case.

Sincerely,

Berklee Trussell
CitiCourt, LLC

cc: David G. Bray

Case: Brody Chemical versus Goldthorpe
 Opposition No.: 91/204,070
 Reporter: Ashley Money
 Date taken: May 20, 2013

WITNESS CERTIFICATE

I, MATT FORSGREN, HEREBY DECLARE:

That I am the witness in the foregoing transcript; that I have read the transcript and know the contents thereof; that with these corrections I have noted this transcript truly and accurately reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON

X No corrections were made.

I, MATT FORSGREN, HEREBY DECLARE UNDER THE PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE FOREGOING IS TRUE AND CORRECT.

MATT FORSGREN
 MATT FORSGREN

SUBSCRIBED and SWORN to this 14 day

of June, 2013, at _____

 Notary Public

ORIGINAL TRANSCRIPT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Brody Chemical Company, Inc.,)	Deposition of:
)	
Opposer,)	<u>MATT FORSGREN</u>
)	
vs.)	
)	
Goldthorpe, Tammy L. aka)	Opposition No.
Tammy Price,)	91/204,070
)	
Applicant.)	

May 20, 2013 * 10:30 a.m.

Location: CitiCourt
236 South 300 East
Salt Lake City, Utah

Reporter: Ashley Money, RPR
Notary Public in and for the State of Utah



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P R O C E E D I N G S

MATT FORSGREN,

called as a witness, being first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. WINESETT:

Q. I'm Nathan Winesett. I'm the attorney for the applicant, Tammy Goldthorpe, formerly known as Tammy Price. To your left is David Bray. He's the attorney for the opposer, Brody Chemical.

You realize you're under oath?

A. Yes.

Q. So the way this works is I'll be deposing you. I'll ask you questions and you'll give answers.

A. Okay.

Q. Our court reporter will transcribe those answers, so everything needs to be verbal, no nods, so forth. And only one person can talk at a time so she can keep up.

A. Okay.

Q. If you don't understand anything I ask you, just ask me to repeat it, and I'll do so.

A. Okay.

1 Q. If there's an objection, let the -- don't
2 speak over Mr. Bray so he can make his objection, but
3 then you can go ahead and answer the question.

4 A. Okay.

5 Q. Can you please state your name and address
6 for the record?

7 A. Matt Forsgren, 1369 South Devonshire Drive
8 in Salt Lake, Utah. 84108 is the ZIP code.

9 Q. Can you please tell me how you prepared
10 for this deposition?

11 A. I was interviewed by you on the phone and
12 we talked about the situation that Tammy is in.

13 Q. Did I ask you some questions in this
14 interview?

15 A. Yes.

16 Q. Did I provide you anything in writing?

17 A. No.

18 Q. Where do you currently work?

19 A. Rhinehart Oil.

20 Q. What is your job there?

21 A. I'm the general manager of the chemical
22 division.

23 Q. Did you used to work for Brody Chemical?

24 A. Yes.

25 Q. When did you start working for Brody

1 Chemical?

2 A. Around 2002.

3 Q. Do you know if that was in the beginning
4 of 2002 or in the end?

5 A. It would have been about the beginning of
6 2002.

7 Q. When did you stop working for Brody
8 Chemical?

9 A. In July of 2006.

10 Q. Okay. Did you work at Brody Chemical
11 continuously through that time?

12 A. Yes.

13 Q. Who hired you in 2002?

14 A. Brandy Monserette.

15 Q. For what job were you initially hired?

16 A. Sales rep.

17 Q. Did that change?

18 A. Yes.

19 Q. How so?

20 A. A few months after I hired on as a sales
21 rep, I became the Utah area manager.

22 Q. What happened after that?

23 A. Shortly after that, they named me the
24 national sales manager.

25 Q. Is that a promotion?

1 A. Yes.

2 Q. When were you promoted to national sales
3 manager?

4 A. It was probably three or so months after I
5 was named Utah area manager.

6 Q. So were you -- in 2003, were you the
7 national sales manager?

8 A. Yes.

9 (EXHIBIT 10 WAS MARKED.)

10 Q. (BY MR. WINESETT) All right. I'm placing
11 in front of you what has been marked Exhibit 10,
12 which is a copy of the original, which I am also
13 handing to you, which is unable to be marked. Do you
14 recognize this exhibit?

15 A. Yes.

16 Q. What is it?

17 A. This is my business card.

18 Q. Is it two-sided?

19 A. Yes.

20 Q. Does your business card indicate your
21 title?

22 A. Yes, it does.

23 Q. What is your title?

24 A. National Sales Manager.

25 Q. Did you remain national sales manager from

1 2003 until you left Brody Chemical?

2 A. Yes.

3 Q. When you became national sales manager in
4 2003, did Brody Chemical have an asphalt release
5 product?

6 A. No.

7 Q. Did they have any kind of release product?

8 A. Yes.

9 Q. What was it?

10 A. Release Agent.

11 Q. Was it -- what was it used for?

12 A. It was a generic release agent used on
13 conveyer belts as a release agent in addition to a
14 couple of other products as release agents like
15 concrete, truck chute release agent.

16 Q. Okay. Was it effective?

17 A. In the right application, yes. It's for
18 conveyer belts as an example. It was effective.

19 Q. Was it effective for asphalt release?

20 A. No.

21 Q. Did you have an effective product for
22 truck beds?

23 A. No.

24 Q. Are truck beds relevant to asphalt release
25 agents?

1 A. Yes.

2 Q. How so?

3 A. That's how the asphalt from the batch
4 plant is transported to the job site where it's then
5 applied to the ground and laid down.

6 Q. And what does a release agent do?

7 A. The release agent acts as a sliding agent
8 so the hot asphalt doesn't stick to the bed of the
9 truck.

10 Q. Okay. Did the generic release agent that
11 Brody Chemical sold -- did it sell well?

12 A. No.

13 Q. Did it sell well for conveyer belts and
14 concrete chutes?

15 A. Yes.

16 Q. But not for asphalt release?

17 A. No.

18 Q. Was it intended for asphalt release?

19 A. No.

20 Q. When you became national sales manager at
21 the beginning of 2003, were you knowledgeable
22 generally about asphalt release agents in the
23 marketplace?

24 A. No.

25 Q. Did you later begin to learn about asphalt

1 release agents?

2 A. Yes.

3 Q. What caused you to become interested in
4 asphalt release agents?

5 A. Based on customers' demand and our other
6 product line.

7 Q. When did customers start requesting
8 specific asphalt release agent?

9 A. The summer of 2003.

10 Q. When -- is that when the season begins?

11 A. Yes.

12 Q. So is asphalt release a seasonal product?

13 A. Here in Utah, it is, yes, due to the
14 temperatures.

15 Q. Did that cause you to start researching
16 asphalt release agents in the marketplace?

17 A. Yes.

18 Q. Approximately when was that?

19 A. The summer of 2003 -- spring of 2003.

20 Q. When you were researching asphalt release
21 agents, what asphalt release products did you find in
22 the marketplace?

23 A. We found one out of Texas called Black
24 Magic, and then we found the AS-12 as well at our
25 current customers.

1 Q. Whose product was Black Magic?

2 A. A company out of Texas.

3 Q. And who was selling AS-12 at that time?

4 A. Tammy.

5 Q. Tammy?

6 A. Goldthorpe.

7 Q. Who was -- who was she selling it through?

8 A. Through RCAI.

9 Q. Do you know Tammy Goldthorpe, formerly
10 known as Tammy Price?

11 A. Yes.

12 Q. When did you first meet Tammy Goldthorpe?

13 A. In a communications class in 2002.

14 Q. Was this at the beginning of 2002?

15 A. Yes, it would have been the very beginning
16 of 2002.

17 Q. Was it before your employment at Brody
18 Chemical?

19 A. Yes.

20 Q. As national sales manager, what were your
21 duties?

22 A. To hire and train new sales reps as well
23 as look at new products that we could bring in to our
24 existing product line.

25 Q. Was one of your objectives to increase

1 sales?

2 A. Yes.

3 Q. How would you go about that?

4 A. By hiring new sales reps and see what the
5 customers' demand was based on their needs.

6 Q. Was one of your objectives to bring in new
7 products for Brody Chemical to resell?

8 A. Yes.

9 Q. How would you go about that?

10 A. For -- through trade shows, expos, working
11 with all of our existing sales reps, seeing what the
12 customers require, what its needs were, and then seek
13 out to fulfill those.

14 Q. Did this sometimes entail seeking out
15 third-party products?

16 A. Yes.

17 Q. Licensing other products?

18 A. Yes.

19 Q. Was one of your objectives to bring in new
20 sales representatives?

21 A. Yes.

22 Q. Did you get a percentage of profits on
23 everything sold by Brody Chemical?

24 A. I did not.

25 Q. How were you paid?

1 A. I was paid on salary, plus a bonus trip
2 with our President's Club on a vacation that we took
3 our top sales reps on every year.

4 Q. Are you familiar with the overall business
5 structure at Brody Chemical at your time of national
6 sales manager?

7 A. Yes.

8 Q. Who owned the company?

9 A. Jon Liddiard.

10 Q. Who was the president?

11 A. Jon Liddiard.

12 Q. Who was directly under him?

13 A. Myself.

14 Q. As the national sales manager?

15 A. Yes, correct.

16 Q. Are there -- were there any other national
17 sales managers?

18 A. No.

19 Q. Who was directly under you?

20 A. We had regional sales managers in
21 California, Arizona, Colorado, and Montana.

22 Q. Did regional managers get paid a salary?

23 A. Yes.

24 Q. Did regional managers get a percentage of
25 sales?

1 A. They did, yes.

2 Q. Percent of what?

3 A. Percentage of total gross profit for their
4 direct sales reps.

5 Q. Was this just for sales in their region?

6 A. Yes.

7 Q. Who was directly under each regional
8 manager?

9 A. Their -- the sales reps that they oversaw.

10 Q. Did bringing in new products and new sales
11 representatives help increase sales?

12 A. Yes.

13 Q. Was it to your advantage?

14 A. Yes.

15 Q. Was it to Brody Chemical's advantage?

16 A. Yes.

17 Q. Did Brody Chemical expect you to go out
18 and get new products?

19 A. Yes.

20 Q. While you were at Brody Chemical, what new
21 products did you bring in?

22 A. We brought a line of aerosols on, we
23 brought some hand cleaners on, a number of products
24 throughout my employment there, including the asphalt
25 release products.

1 Q. Were many of those products owned by
2 others?

3 A. Yes.

4 Q. Can you give me some examples?

5 A. Spraywaves, an aerosol manufacturer. They
6 manufacture a number of aerosols that we private
7 label. Claire is another aerosol manufacturer.
8 Amrap is another aerosol manufacturer that we sold
9 their product. A hand cleaner made by Royal
10 Solutions, Shepard Brothers, is another product. And
11 then Slippery Wizard with Tammy.

12 Q. I'm placing in front of you a document
13 marked Exhibit 8. Do you know what this document is?

14 A. It looks like a Brody Chemical industrial
15 catalog.

16 Q. Do you recognize some of the products in
17 this catalog? Take a second to look through it.

18 A. Yes.

19 Q. Do you recognize some of the products in
20 this catalog?

21 A. Yes.

22 Q. Does this brochure advertise products that
23 were sold by Brody Chemical while you were there?

24 A. Some of them, yes.

25 Q. Are some of those products -- excuse me.

1 Can you identify some of those products that were
2 sold by Brody Chemical while you were at Brody
3 Chemical?

4 A. Yes. The Acrylic Urethane Sealer adhesive
5 spray, Aircraft Cleaner. A number of these products
6 were definitely sold when I was there. Chain and
7 Cable Lube such as degreaser, Coil Cleaner.

8 Q. Are any of those products that were sold
9 by Brody Chemical while you were there not owned by
10 Brody Chemical?

11 A. Yes.

12 Q. Are they advertised in that catalog?

13 A. Yes.

14 Q. Can you identify some of them?

15 A. Yes. Adhesive Spray Aerosol would have
16 been one of the aerosol manufacturers that they
17 private labeled. Barrier Cream Aerosol, same. Chain
18 and Cable Lube, Coil Cleaner, Contact Cleaner.

19 Q. Is there a lot of them?

20 A. There's a lot of them. I could go through
21 this book page by page and let you know the ones that
22 we just brought in and private labeled versus
23 manufacture.

24 Q. Does this Brody Chemical product catalog
25 include a product called Slippery Wizard?

1 A. Yes.

2 Q. What page is it on?

3 A. Page 6.

4 Q. What is it?

5 A. It's an asphalt release agent.

6 Q. Is this product owned by Brody Chemical?

7 A. No.

8 Q. Whose product is it?

9 A. Tammy's.

10 Q. Is it sold by Brody Chemical?

11 A. Yes.

12 Q. Does this product -- Brody Chemical

13 catalog include a product called White Wizard?

14 A. Yes.

15 Q. What page is it on?

16 A. Page 6.

17 Q. According to the catalog, what is it?

18 A. It's another asphalt release agent.

19 Q. Does this Brody Chemical product catalog

20 include a product called Clear Wizard?

21 A. Yes.

22 Q. What page is it on?

23 A. Page 6.

24 Q. According to the catalog, what is it?

25 A. Another asphalt release agent.

1 Q. Did Brody Chemical sell White Wizard or
2 Clear Wizard during your time at Brody Chemical?

3 A. No.

4 Q. According to the catalog, are White
5 Wizard, Clear Wizard, and Slippery Wizard all asphalt
6 release agents?

7 A. Yes.

8 Q. Are the marks White Wizard and Clear
9 Wizard similar in appearance to you to Slippery
10 Wizard?

11 A. Yes.

12 Q. Are the marks White Wizard and Clear
13 Wizard similar in sound to Slippery Wizard?

14 A. Yes.

15 Q. Are the marks White Wizard and Clear
16 Wizard similar in connotation to Slippery Wizard?

17 A. Yes.

18 Q. Are the marks White Wizard and Clear
19 Wizard similar in commercial impression to Slippery
20 Wizard?

21 A. Yes.

22 Q. Are the marks White Wizard and Clear
23 Wizard each commercially similar to Slippery Wizard?

24 A. Yes.

25 Q. Looking at this catalog, would you expect

1 that White Wizard and Clear Wizard would also be
2 owned by Mrs. Goldthorpe?

3 MR. BRAY: Objection, form, foundation,
4 relevance.

5 A. Yes. They seem to all be in the same
6 family as the Wizard family. One seems to have a
7 water soluble dilution higher than the other. They
8 all seem to be in the same family of products.

9 Q. (BY MR. WINESETT) As -- in your duties at
10 Rhinehart Oil, do you frequently look at products in
11 the marketplace?

12 A. Yes.

13 Q. Including asphalt release?

14 A. Yes.

15 Q. Would it be your impression, looking at
16 this catalog, that Clear Wizard and White Wizard
17 would also be owned by Slippery Wizard?

18 MR. BRAY: Form, foundation, relevance.

19 A. Yes.

20 Q. (BY MR. WINESETT) Can you please repeat
21 your answer?

22 A. Yes.

23 MR. BRAY: Same objection.

24 Q. (BY MR. WINESETT) Would you be likely to
25 be confused as to the source of the product if they

1 had different owners?

2 A. Yes.

3 Q. How come?

4 A. Because they're all in the same family,
5 Asphalt release, last name Wizard.

6 Q. Okay.

7 A. One seems to be clear, one seems to be
8 white, and slippery seems to be another named release
9 agent.

10 Q. Was Slippery Wizard one of the new
11 products that you brought in, as manager, for Brody
12 Chemical to sell?

13 A. Yes.

14 Q. Whose product was Slippery Wizard?

15 MR. BRAY: Objection, form.

16 A. Tammy's.

17 Q. (BY MR. WINESETT) Tammy who?

18 A. Tammy Price.

19 Q. Did you keep in touch with Tammy
20 Goldthorpe, formerly known as Tammy Price, after
21 meeting her in 2002?

22 A. Yes.

23 Q. Where was she when you became national
24 sales manager in 2003?

25 A. She was working in Salt Lake.

1 Q. What -- did she have her own business?

2 A. Yes.

3 Q. Did she have a colleague?

4 A. Yes.

5 Q. Who was that?

6 A. Steve Madsen.

7 Q. Where was their business?

8 A. Off California Avenue on the west side of
9 Salt Lake.

10 Q. What did they do?

11 A. They manufactured, sold, delivered asphalt
12 release.

13 Q. Do you know Steve Madsen?

14 A. Yes.

15 Q. What is his specialty?

16 A. Blending chemicals, water treatment,
17 sales, delivery.

18 Q. Is he a chemist?

19 A. I don't know if he has a chemical degree,
20 but that's how I've always known him as blending
21 formulas for water treatment and other products.

22 Q. Were they involved with RCAI?

23 A. Yes.

24 Q. Were they involved with a product called
25 ASA-12?

1 A. Yes.

2 Q. Was it your understanding that ASA-12 was
3 Tammy Goldthorpe's product?

4 A. Yes.

5 Q. Did you want to bring in the ASA-12
6 product?

7 A. Yes.

8 Q. Did you attempt to get Tammy Goldthorpe to
9 license her ASA-12 product to Brody Chemical?

10 A. Yes.

11 Q. When did you start trying to get Tammy's
12 product?

13 A. Made contact about the product in the
14 spring of 2003.

15 Q. Was she interested?

16 A. She wasn't -- she wasn't extremely
17 interested at that time.

18 Q. Did you continue to negotiate with her?

19 A. Yes. I kept in touch with her and kept
20 after her over the course of the next year to see if
21 she would be interested in bringing her product over.

22 Q. Did you represent that she would be paid
23 royalties to license her product?

24 A. Yes.

25 Q. Is this what she asked for?

1 A. Yes.

2 Q. Did she want to use the ASA-12 mark?

3 A. No.

4 Q. Did she want to come up with a different
5 mark to use with this asphalt release product?

6 A. Yes.

7 Q. What mark did she choose?

8 A. Slippery Wizard.

9 Q. Had you ever heard the mark Slippery
10 Wizard before?

11 A. No.

12 Q. And you heard this mark from Tammy
13 Goldthorpe?

14 A. Yes.

15 Q. Did she already have the mark while you
16 were negotiating?

17 A. Yes.

18 Q. Was this prior to October of 2004?

19 A. Yes.

20 Q. Did you approach Jon Liddiard about
21 licensing Tammy Goldthorpe's product?

22 A. Yes.

23 Q. Was he interested?

24 A. Yes.

25 Q. Did you tell him about the mark Slippery

1 Wizard?

2 A. Yes.

3 Q. What happened then?

4 A. He made fun of the name, called it
5 Slippery Lizard, and didn't know how that name would
6 go over. But that's the name she had chosen, so --

7 Q. Did he still want to sell the product?

8 A. Yes.

9 Q. Did he suggest a royalty amount for Tammy
10 Goldthorpe's product?

11 A. No.

12 Q. Who suggested a royalty amount?

13 A. She did, Tammy.

14 Q. What amount?

15 A. A dollar a gallon on every gallon sold as
16 a royalty.

17 Q. Did Brody Chemical make a counteroffer?

18 A. Yes. He offered \$0.50 a gallon.

19 Q. Did Tammy Goldthorpe accept this?

20 A. No.

21 Q. Did she reject it?

22 A. Yes.

23 Q. Did she counteroffer?

24 A. Yes, back at the original dollar a gallon.

25 Q. Did Brody Chemical agree to the dollar per

1 gallon?

2 A. Yes.

3 Q. Did Jon agree to the dollar per gallon?

4 A. Yes.

5 Q. Did you also approach Tammy Goldthorpe
6 about being a sales representative?

7 A. Yes.

8 Q. Why were you interested in Tammy
9 Goldthorpe becoming a sales representative?

10 A. To bring her customer base and knowledge
11 into -- back into the company.

12 Q. She had her own accounts?

13 A. Yes.

14 Q. Were you aware that Tammy Goldthorpe
15 worked at Brody Chemical in the late 1990s?

16 A. Yes.

17 Q. Was she interested in becoming a sales rep
18 like before?

19 A. Not entirely, no.

20 Q. Did she want to do her own thing?

21 A. Yes.

22 Q. Did she want to sell and promote her
23 Slippery Wizard product?

24 A. Yes.

25 Q. Did you tell her that Brody Chemical had

1 the ability to blend her Slippery Wizard product?

2 A. Yes.

3 Q. Did you tell her that Brody Chemical had
4 the ability to package and ship her Slippery Wizard
5 product?

6 A. Yes.

7 Q. Did you propose a royalty to Tammy
8 Goldthorpe on behalf of Brody Chemical to allow Brody
9 Chemical to make and sell the Slippery Wizard product
10 and use the Slippery Wizard mark?

11 A. Yes.

12 Q. What was it?

13 A. A dollar a gallon override on every gallon
14 sold.

15 Q. Did she orally accept this royalty?

16 A. Yes.

17 Q. Were these terms accepted by Brody
18 Chemical?

19 A. Yes.

20 Q. Were they accepted by Jon Liddiard?

21 A. Yes.

22 Q. Did you introduce Tammy Goldthorpe and her
23 Slippery Wizard to all of Brody Chemical?

24 A. Yes.

25 Q. Where did you do this?

1 A. At a national sales meeting with all the
2 sales reps.

3 Q. When was this?

4 A. It would have been spring of 2005.

5 Q. Who introduced her?

6 A. Jon did. Jon Liddiard did.

7 Q. Was the Slippery Wizard product introduced
8 as her product?

9 A. Yes.

10 **(EXHIBIT 11 WAS MARKED.)**

11 Q. (BY MR. WINESETT) I'm placing in front of
12 you a DVD disc marked Exhibit 11. Do you recognize
13 this disc?

14 A. Yes.

15 Q. What is it?

16 A. This is a World of Asphalt DVD.

17 Q. What does the label say?

18 A. "Brody Chemical."

19 Q. What else?

20 A. "World of Asphalt," with Brody Chemical's
21 website and information and 1-800 number.

22 Q. Okay. What did you use this disc for?

23 A. As a sales tool and product knowledge
24 information to customers.

25 Q. Did you create the video on this disc?

1 A. No.

2 Q. Where did it come from?

3 A. It came from a training video from the
4 World of Asphalt.

5 Q. And when was the video made?

6 A. 2003.

7 Q. Why did Brody Chemical play this video at
8 the national sales meeting?

9 A. It shows Tammy being interviewed by a news
10 station that was doing a piece on the World of
11 Asphalt as an instructional video. It shows the work
12 crews laying the asphalt on the hot road as Tammy was
13 dictating what was going on with the release agents
14 and how it works with the asphalt industry.

15 Q. Was this part of the Slippery Wizard
16 introduction at the 2005 national sales meeting?

17 A. Yes.

18 Q. Was it part of the introduction of Tammy
19 Goldthorpe as the owner of Slippery Wizard?

20 MR. BRAY: Objection, form.

21 A. Yes.

22 Q. (BY MR. WINESETT) Okay.

23 MR. WINESETT: For the record, I'm placing
24 the DVD in the video player.

25 Q. (BY MR. WINESETT) I forgot to ask you,

1 did Brody Chemical play the entire video at the
2 national sales manager meeting?

3 A. A good percentage of it, but not the
4 entire video. Reps tend to get rambunctious if the
5 lights are off, watching a video too long. Not the
6 entire video, just a portion of it, as I recall.

7 Q. I've got the computer working. I've got
8 the menu screen for the video up. Is there a date of
9 the recording on the menu screen?

10 A. Yes.

11 Q. What is it?

12 A. Looks like March 7, 2005.

13 Q. Is that around the time of the national
14 sales meeting?

15 A. Yes.

16 MR. WINESETT: Okay. I'm going to play
17 the initial title sequence. This is the attorney
18 asking.

19 Q. (BY MR. WINESETT) What is the title of
20 the video?

21 A. "World of Asphalt, 2003, Show and
22 Conference."

23 Q. Okay. I am going to fast forward to the
24 time 54 minutes and 50 seconds.

25

1 (START VIDEO RECORDING:)

2 UNIDENTIFIED MAN: Participating in the
3 show in our next segment, we're going to talk about
4 release agents, and I'd like to bring in Tammy Price
5 from RCAI.

6 Good afternoon, Tammy.

7 MS. PRICE: Hi, Jason. How are you doing?

8 UNIDENTIFIED MAN: Good. How are you? As
9 know when you wrote this material, we're out at the
10 asphalt plant. We need to put release agents in the
11 trucks. And in the past, this industry has used
12 petroleum-based release agents, and that's a process
13 that's moving away from us.

14 Can you tell me a little bit about why
15 we're not using petroleum-based release agents
16 anymore?

17 MS. PRICE: Well, petroleum-based release
18 agents not only can affect the groundwater if used in
19 excessive use, but they also can change the
20 composition of the asphalt, which are two things you
21 don't want to see happen.

22 UNIDENTIFIED MAN: Absolutely, because if
23 we change the composition of the asphalt, then
24 something doesn't good happen down the road. You do
25 non-petroleum-based release agents. Do they have any

1 effect on safety or handling procedures for the
2 crews?

3 MS. PRICE: Well, a couple things that you
4 want to look for when choosing a release agent of
5 non-petroleum. You want to make sure that it doesn't
6 change the composition and it's not flammable or
7 caustic and it adheres to the metal of the bed.

8 UNIDENTIFIED MAN: Well, obviously,
9 there's one basic question that I accidentally
10 overlooked. Why do we use release agents on truck
11 beds?

12 MS. PRICE: Well, release agents are
13 important for the fact that you want to be able to
14 utilize all the material in the haul and also avoid
15 the cost of shipping and cleaning the trucks at the
16 end of the day.

17 UNIDENTIFIED MAN: Okay. Excellent.
18 Thank you. And can you give us any tips or
19 recommendations for applying release agents?

20 MS. PRICE: Well, there's several
21 application systems out there to apply the release
22 agent. Some keys things you want to look for is does
23 the release agent itself adhere to the metal?
24 There's several products out there that are water
25 based, and water tends to evaporate and they don't

1 become quite as effective.

2 So make sure that you're getting the most
3 effectiveness out of your product and application.
4 Make sure it has a wide-range spread.

5 UNIDENTIFIED MAN: Great. Thank you,
6 Tammy. What should we keep in mind from the
7 contractor or specifying agency when they're looking
8 at making a selection for a non-petroleum-based
9 release agent?

10 MS. PRICE: Well, there's really two key
11 points you want to look for, cost and effectiveness
12 of the product. How many times do you -- are you
13 able to apply the product and get effective loads?
14 So cost and effectiveness.

15 UNIDENTIFIED MAN: Tammy, thank you very
16 much. We appreciate your help this afternoon.

17 MS. PRICE: Thank you.

18 (End of video recording.)

19

20 MR. WINESETT: Okay. I have stopped the
21 video at 57 minutes and 14 seconds.

22 Q. (BY MR. WINESETT) Was the clip you just
23 saw played at the national sales meeting?

24 A. Yes.

25 Q. Who was interviewed in the video?

1 A. Tammy Price.

2 Q. Did she appear knowledgeable about asphalt
3 release?

4 A. Yes.

5 Q. While you were at Brody Chemical, did
6 Tammy Goldthorpe control the composition and formula
7 of the Slippery Wizard product?

8 A. Yes.

9 Q. Did she control the nature and quality of
10 the Slippery Wizard product?

11 A. Yes.

12 Q. Did she control the advertising literature
13 and instructions for Slippery Wizard?

14 A. Yes.

15 Q. Was she the most knowledgeable person
16 regarding the Slippery Wizard product?

17 A. Yes.

18 Q. Did employees and customers generally
19 associate Mrs. Goldthorpe as the source of the
20 Slippery Wizard product?

21 A. Yes.

22 MR. BRAY: Objection, form, foundation.

23 Q. (BY MR. WINESETT) Did you associate
24 Mrs. Goldthorpe as the source of the Slippery Wizard
25 product?

1 A. Yes.

2 Q. Do you still associate Mrs. Goldthorpe as
3 the source of the Slippery Wizard product?

4 A. Yes.

5 Q. We asked you a lot of questions today.
6 Did you understand my questions and give truthful,
7 responsive answers?

8 A. Yes.

9 MR. WINESETT: Thank you. That's all I
10 have.

11 EXAMINATION

12 BY MR. BRAY:

13 Q. Matt, I just have a few questions.

14 A. Sure.

15 Q. Just picking up where Nathan left off, you
16 left Brody Chemical in July 2006?

17 A. Yes.

18 Q. So you have no knowledge regarding who
19 controlled the formula at Brody Chemical after you
20 left, correct?

21 A. Correct.

22 Q. And do you have any knowledge as to the
23 present formulation of the Brody Chemical Slippery
24 Wizard product?

25 A. No, I don't.

1 Q. Do you have any knowledge as to whether
2 the formula changed after July 2006?

3 A. No, I don't.

4 Q. I think you said that the Slippery Wizard
5 product that began -- the Slippery Wizard product
6 began to be sold by Brody when?

7 A. 2004 we sold a little bit out of state to
8 some of Tammy's customers during the winter in
9 Arizona and Phoenix, as I recall. And then the
10 summer of 2005 is when, you know, it became hot and
11 heavy.

12 Q. Okay. Is it your understanding that the
13 product that was initially sold under the Slippery
14 Wizard name by Brody Chemical was -- the formula was
15 identical to the RCAI ASA-12 product?

16 A. Yes.

17 Q. And RCAI, to your knowledge, never sold an
18 asphalt release product under the name Slippery
19 Wizard, correct?

20 A. Correct.

21 Q. When they sold an asphalt release product,
22 it was always under ASA-12?

23 A. Correct.

24 Q. Do you know what happened to RCAI? Was it
25 still in business after Tammy left?

1 A. I have no idea.

2 Q. And what's your present position with
3 Rhinehart Oil?

4 A. I'm the general manager of the chemical
5 division.

6 Q. Does Rhinehart sell, generally speaking,
7 products that are competitive with products sold by
8 Brody?

9 A. Yes.

10 Q. Are you familiar today in your position
11 with Rhinehart Oil as to the asphalt release agents
12 that are in the market?

13 A. No.

14 Q. To your knowledge, has anybody sold a
15 product under the name Slippery Wizard except Brody
16 Chemical?

17 A. No.

18 Q. So just to clarify for the record, you're
19 not aware of anybody selling a product called
20 Slippery Wizard except the product that was sold by
21 Brody Chemical?

22 A. Not to my knowledge.

23 Q. Did you make any effort to reduce whatever
24 the agreement was that you testified you reached with
25 Tammy Price to writing?

1 A. Yes.

2 Q. And was there a writing?

3 A. Yes.

4 Q. And I'm handing you what's been marked as
5 Exhibit 4. Is Exhibit 4 the writing?

6 A. Yes. I wasn't present during the time of
7 this document. It was all verbal when we initiated
8 with Tammy.

9 Q. Okay. Did you play any role in
10 negotiating that document, Exhibit 4?

11 A. Yes, the dollar a gallon override.

12 Q. Let me be clear. Separate from the terms
13 of the agreement, did you play any role going back
14 and forth with Tammy with regard to this piece of
15 paper?

16 A. Not the piece of paper. It was all
17 verbal.

18 Q. Now, you testified, looking at Exhibit 8,
19 regarding certain products that Brody sold that were
20 private labeled.

21 A. Yes.

22 Q. And that means the product was kind of
23 purchased off the shelf from the third party and then
24 Brody had permission from that party to put their own
25 label on it?

1 A. Correct.

2 Q. Do you know whether -- and I think you
3 gave me a couple of examples of adhesive spray
4 aerosol; is that right?

5 A. Correct.

6 Q. Were you familiar with the contracts that
7 Brody entered into with those third parties to
8 private label their goods, private --

9 A. No.

10 Q. Do you know whether or not any of those
11 contracts were verbal?

12 A. I have no idea. I wasn't involved with
13 those contracts, so --

14 Q. Fair enough. Do you know whether or not
15 Brody paid for the product it purchased and then sold
16 or whether Brody paid some sort of commission or
17 royalty of a certain amount per gallon with regard to
18 other third-party products?

19 A. I have no idea. I wasn't involved with
20 any of those negotiations.

21 Q. Fair enough. You've said when you were
22 the national sales representative for Brody Chemical
23 one of your duties was to hire and train new sales
24 representatives.

25 A. Correct.

1 Q. And you did hire Tammy Price as a sales
2 representative, correct?

3 A. Correct.

4 Q. And she became employed by Brody Chemical
5 as a sales representative in approximately
6 October 2004, correct?

7 A. Yes.

8 Q. There was no doubt in your mind as to the
9 fact that she was an employee of Brody Chemical,
10 correct?

11 MR. WINESETT: Objection, legal
12 conclusion.

13 A. Yes. She worked for Brody.

14 Q. (BY MR. BRAY) Going back to Exhibit 4,
15 Matt, you talked about having verbally negotiated the
16 dollar per gallon. Remember that?

17 A. Yes.

18 Q. Did you verbally negotiate or -- strike
19 that.

20 Did you negotiate with Ms. Price the deal
21 term .3?

22 A. No.

23 Q. Is it your understanding that that term
24 was negotiated between Jon Liddiard and Tammy Price?

25 A. No.

1 Q. You don't know where that term came from,
2 the splitting of travel expenses?

3 A. No.

4 Q. Fair enough. I can only ask you what you
5 do know.

6 A. Yeah.

7 Q. Were there any terms with regard to the
8 verbal agreement -- so -- strike that.

9 Was it your understanding that the verbal
10 agreement was in place from the beginning, October of
11 2004, up until the time that Exhibit 4 was executed?

12 A. Yes.

13 Q. Were there any other terms of your verbal
14 agreement with Ms. Price/Ms. Goldthorpe that aren't
15 reflected in Exhibit 4?

16 A. Not that I'm aware of.

17 Q. When you hired -- during your term as the
18 national sales manager for Brody Chemical, when you
19 hired new sales representatives, did you have them
20 sign a sales representative agreement?

21 A. Yes.

22 Q. Did you have Ms. Price sign a sales
23 representative agreement with Brody?

24 A. She declined to sign it.

25 Q. Did she say why?

1 A. No, just she wasn't comfortable with the
2 contract.

3 Q. Okay. But did she identify any particular
4 points?

5 A. No.

6 Q. Did you have any discussions with anybody
7 at Brody regarding her not being comfortable with the
8 standard sales representative agreement?

9 A. Jon Liddiard, the owner.

10 Q. Describe for me that conversation.

11 A. I just let him know she wasn't comfortable
12 with the contract and she wasn't comfortable signing
13 it.

14 Q. Okay. If you look at Exhibit 8, page 6,
15 which is the Brody catalog, in Exhibit 8, the
16 Slippery Wizard product is not identified as Tammy
17 Goldthorpe's Slippery Wizard product, correct?

18 A. Correct.

19 Q. During the time that you were the national
20 sales representative for Brody Chemical, it's true
21 that Brody Chemical did not label any of its asphalt
22 release products Tammy Goldthorpe's Slippery Wizard?

23 A. Correct.

24 Q. Brody just labeled the product Slippery
25 Wizard?

1 A. Correct.

2 Q. In your mind, did the deal that you
3 negotiated verbally with Ms. Price restrict Brody
4 Chemical from developing its own asphalt release
5 product?

6 A. Not to my knowledge.

7 Q. So if they came up with a new formula, it
8 would have been okay with them in terms of the
9 negotiation -- in terms of the agreement that you
10 verbally negotiated with Ms. Price, that would not
11 have been a violation of that verbal agreement,
12 correct?

13 A. Not to my knowledge.

14 Q. Okay. And did you have any -- well, as
15 the person that you testified negotiated the verbal
16 agreement with Ms. Price, the -- one of the deal
17 points was that for each gallon of Slippery Wizard
18 sold, not including her own sales, Tammy will receive
19 an override of \$1 per gallon, right?

20 A. Correct.

21 Q. In your mind, did -- were you paying --
22 was Brody paying a dollar a gallon for rights to use
23 the formula or rights to use the Slippery Wizard
24 trademark?

25 A. They came hand in hand. When she came

1 from RCAI, they came together. They were both part
2 of bringing Tammy on board under her conditions.

3 Q. Were there any writings other than
4 Exhibit 4 that reflected a negotiation between
5 yourself and Ms. Price regarding the payment of
6 override commissions on a Slippery Wizard product?

7 A. No.

8 Q. Would it be fair to say that from your
9 perspective, negotiating a verbal agreement with
10 Ms. Price, the \$1 a gallon override, that was being
11 paid by Brody Chemical for both the formulation and
12 the Slippery Wizard mark?

13 A. Correct.

14 Q. Do you know whether or not the Slippery
15 Wizard formula that Brody Chemical used when
16 Ms. Goldthorpe began working for Brody Chemical again
17 in October 2004 contained a surfactant?

18 A. No idea. I wasn't involved with the
19 formulation. That was proprietary between Tammy and
20 Jon.

21 Q. Fair enough.

22 MR. BRAY: I have nothing further.

23 MR. WINESETT: Redirect.
24
25

FURTHER EXAMINATION

BY MR. WINESETT:

Q. In your experience as national sales manager for Brody Chemical and the general manager at Rhinehart Oil, could someone tweak a formula and make a derivative and slight change and evade a license and royalty agreement?

MR. BRAY: Objection, form, foundation, relevance.

A. I could imagine it could be done, yes.

Q. (BY MR. WINESETT) Would that be ethical?

A. No.

Q. Was it your understanding that Tammy Goldthorpe's Slippery Wizard formula was -- and any derivatives from it would be paid a dollar per gallon so long as Brody Chemical sold it?

A. Yes.

Q. Regardless of the formula, if Brody Chemical continues to use the Slippery Wizard mark, would they still be obligated to pay Tammy Goldthorpe?

MR. BRAY: Objection, form, foundation.

A. Yes.

Q. (BY MR. WINESETT) That -- was that your understanding?

1 A. Yes. In the verbal negotiations, there
2 was never a time limit to expire the royalties that
3 we were going to pay Tammy.

4 Q. So the contract was at-will?

5 A. Yes. No expiration date.

6 Q. Can we please hand him Exhibit 4? Can you
7 please review this document and let me know if
8 there's any term or if it's at-will?

9 A. No term, no expiration date.

10 Q. Could Jon Liddiard or Brody Chemical have
11 developed a comparable asphalt release agent product
12 without the knowledge and experience of Tammy
13 Goldthorpe?

14 MR. BRAY: Objection, form, foundation,
15 relevance.

16 A. I would say yes. They could utilize the
17 formula that Jon Liddiard knew and change a few
18 things. It could be done --

19 Q. (BY MR. WINESETT) The formula -- and
20 could he do that from the formula he learned from
21 Tammy Goldthorpe?

22 A. No, he couldn't. He couldn't -- this was
23 a completely different product that we had ever heard
24 about or seen before, and Jon had no idea where to
25 even start with the asphalt release agent like the

1 ones we'd seen on the market based on our experience
2 with the existing release agent that we had.

3 Q. He didn't have sufficient knowledge to
4 develop an asphalt release agent such as Slippery
5 Wizard?

6 A. Correct.

7 MR. BRAY: Objection, form, foundation,
8 relevance.

9 Q. (BY MR. WINESETT) Was it Brody Chemical's
10 inability to manufacture a comparable asphalt release
11 agent that led you to negotiate a license and royalty
12 for the Slippery Wizard product?

13 A. Yes.

14 MR. BRAY: Objection, form, foundation,
15 relevance.

16 Q. (BY MR. WINESETT) I'm not quite sure, but
17 I believe you said Rhinehart Oil was a competitor
18 with Brody Chemical.

19 A. We compete on -- we have some of the
20 similar products.

21 Q. Do you have an ownership interest in
22 Rhinehart Oil?

23 A. No.

24 Q. I was unclear as to whether you said you
25 were familiar with asphalt release agents in the

1 marketplace.

2 A. Today?

3 Q. Are you generally aware of asphalt release
4 agent products in the marketplace?

5 A. Generically, yes. We don't sell an
6 asphalt release agent at Rhinehart, so I'm not as
7 current with the marketplace right now. We -- as
8 Brody, in charge of bring on new products and
9 whatnot. But we have not sold an asphalt release at
10 Rhinehart.

11 Q. Do you continue to keep in contact with
12 any manufacturers or suppliers regarding asphalt --
13 that are involved in asphalt release agent product?

14 A. Yes.

15 Q. Do those contacts -- are they familiar
16 with Slippery Wizard?

17 A. Yes.

18 Q. Is it your understanding that they know
19 Tammy Goldthorpe as the creator and owner of Slippery
20 Wizard?

21 A. Yes.

22 MR. BRAY: Objection, form, foundation,
23 hearsay, relevance.

24 Q. (BY MR. WINESETT) When you say Tammy
25 Goldthorpe worked for Brody Chemical, are you

1 referring to sales of Brody Chemical products other
2 than Slippery Wizard?

3 A. No.

4 Q. Are you -- let me rephrase that. With
5 regards to Slippery Wizard, would you consider Tammy
6 Goldthorpe during your time to be independent?

7 MR. BRAY: Objection, form.

8 A. Selling just that one product was part of
9 the terms of her coming back to sell her product.
10 She didn't want to sell degreasers and floor cleaners
11 and hand soap. She wanted to focus on her product
12 and her product only.

13 Q. (BY MR. WINESETT) Was she in charge of
14 that product?

15 A. Yes.

16 Q. She was the boss?

17 A. Yes.

18 Q. Did she sell certain other products that
19 were not Slippery Wizard?

20 A. If a customer requested something, then
21 yes, she would sell that.

22 Q. So she sold to her customers some of Brody
23 Chemical products if they requested it?

24 A. Yes.

25 Q. And she was paid as an employee for those

1 products?

2 A. Correct.

3 Q. But not for Slippery Wizard?

4 A. No.

5 MR. WINESETT: Okay. I have no further
6 questions.

7 MR. BRAY: Okay.

8 (Deposition concluded at 11:44 a.m.)

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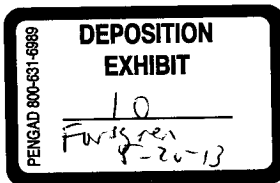
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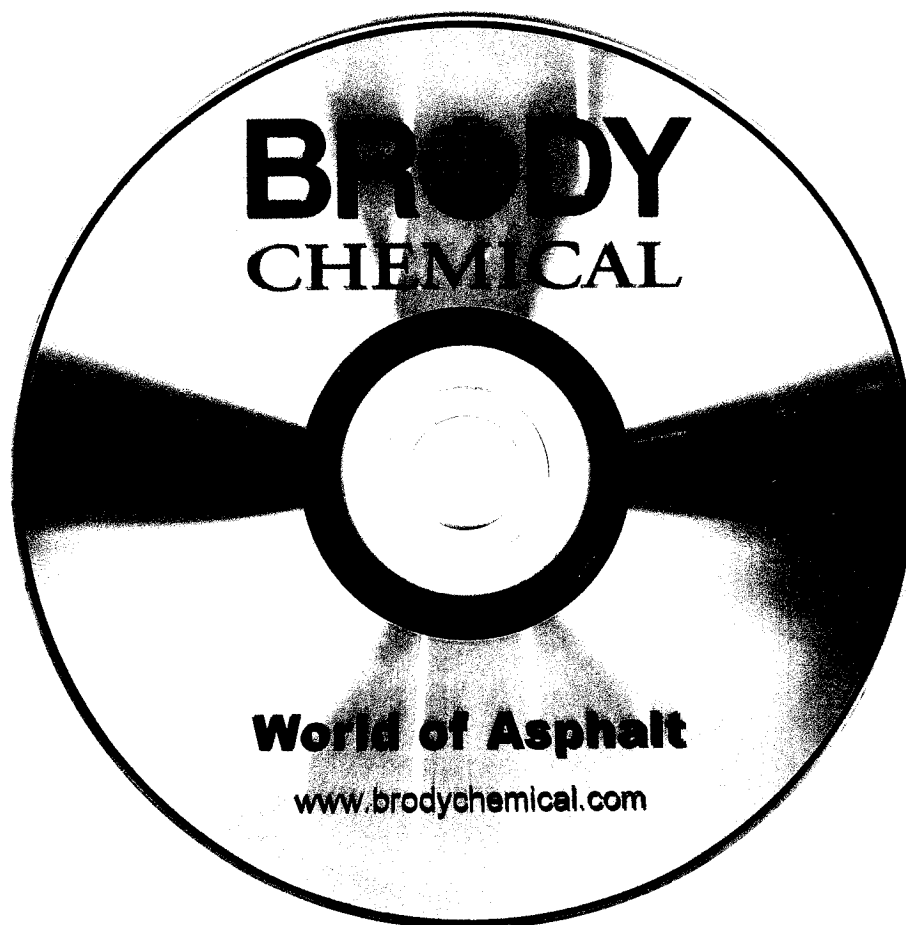
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Matt Forsgren * May 20, 2013





BULKY EXHIBITS

Proceeding No.	91204070
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Filing Date	04/23/2014
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TITLE : CD-ROM

91204070

Case: Brody Chemical versus Goldthorpe
 Opposition No.: 91/204,070
 Reporter: Ashley Money
 Date taken: May 20, 2013

WITNESS CERTIFICATE

I, **MATT FORSGREN**, HEREBY DECLARE:
 That I am the witness in the foregoing
 transcript; that I have read the transcript and know
 the contents thereof; that with these corrections I
 have noted this transcript truly and accurately
 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
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X No corrections were made.

I, **MATT FORSGREN**, HEREBY DECLARE UNDER THE
 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 FOREGOING IS TRUE AND CORRECT.

MATT FORSGREN
 MATT FORSGREN

SUBSCRIBED and SWORN to this 14 day

of June, 2013, at _____

 Notary Public